



## *Florida Department of Transportation*

**RICK SCOTT**  
GOVERNOR

605 Suwannee Street  
Tallahassee, FL 32399-0450

**ANANTH PRASAD, P.E.**  
SECRETARY

### **M E M O R A N D U M**

**DATE:** October 24, 2012

**TO:** Tom Byron, Chief Engineer

**FROM:** Duane Brautigam, Director, Office of Design  
David Sadler, Director, Office of Construction

**COPIES:** Trey Tillander, State Specifications Engineer

**SUBJECT:** Mandatory Specification Revision No. 6

I approve the implementation plan of the subject Specification.

Duane Brautigam

Signature on File  
Director, Office of Design

10-24-12  
Date

David Sadler

Signature on File  
Director, Office of Construction

10-24-12  
Date



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SECRETARY

### MEMORANDUM

**DATE:** October 24, 2012

**TO:** District Specifications Engineers  
State Specifications and Estimates Office Staff

**FROM:** Trey Tillander, State Specifications Engineer

**CC:** Tom Byron, Chief Engineer  
Calvin Johnson, Chief, Civil Litigation, General Counsel  
Duane Brautigam, Director, Office of Design  
David Sadler, Director, Office of Construction  
Rudy Powell, State Construction Engineer  
Tim Lattner, Director, Office of Maintenance  
Juanita Moore, Contracts Administrator  
Art Wright, Manager, Equal Opportunity Office

**SUBJECT:** MANDATORY SPECIFICATIONS REVISIONS  
July 2012 Workbook: Mandatory Revision No. 6

Revise specification packages as described below for the effective letting date as noted:

Specification Number	Heading	Revision Date	Effective Letting Date	Remarks
SP0060502	Control of Materials – Sources of Supply - Steel.	10-19-12	11-12	New Special Provision. Usage Note: All Jobs.
SP0072400	Legal Requirements and Responsibility to the Public	10-23-12	11-12	New Special Provision. Usage Note: All Jobs.

Special Provision SP0060502 is required due to the expansion of the Buy America provision by the federal MAP-21 legislation.

Special Provision SP0072400 is required due to changes in submittal of reports and data through the Equal Opportunity Compliance System.

**CONTROL OF MATERIALS – SOURCE OF SUPPLY - STEEL.**  
**(REV 10-19-12) (11-12)**

SUBARTICLE 6-5.2 (Pages 55 - 56) is deleted and the following substituted:

**6-5.2 Source of Supply-Steel:** Use steel and iron produced in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. Ensure that all manufacturing processes for this material occur in the United States. As used in this specification, a manufacturing process is any process that modifies the chemical content, physical shape or size, or final finish of a product, beginning with the initial melding and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. When using steel and iron as a component of any manufactured product incorporated into the project (e.g., concrete pipe, prestressed beams, corrugated steel pipe, etc.), these same provisions apply, except that the manufacturer may use minimal quantities of foreign steel and iron when the cost of such foreign materials does not exceed 0.1% of the total Contract amount or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that the Contractor uses but does not incorporate into the finished work. Provide a certification from the producer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the furnished product was manufactured in the United States in accordance with the requirements of this specification and the Buy America provisions of 23 CFR 635.410, as amended. Such certification shall also include (1) a statement that the product was produced entirely within the United States, or (2) a statement that the product was produced within the United States except for minimal quantities of foreign steel and iron valued at \$ (actual value). Furnish each such certification to the Engineer prior to incorporating the material into the project. Prior to the use of foreign steel on a project, furnish invoices to document the cost of such material, and obtain the Engineer's written approval prior to incorporating the material into the project.

**LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC –  
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM.  
(REV 10-23-12)**

ARTICLES 7-24 (of the Supplemental Specifications) is deleted and the following substituted.

**7-24 Disadvantaged Business Enterprise Program.**

**7-24.1 Disadvantaged Business Enterprise Affirmative Action Plan:** Prior to award of the Contract, have an approved Disadvantaged Business Enterprise (DBE) Affirmative Action Program Plan filed with the Equal Opportunity Office. Update and resubmit the plan every three years. No Contract will be awarded until the Department approves the Plan. The DBE Affirmative Action Program Plan is incorporated into and made a part of the Contract.

**7-24.2 Required Contract and Subcontract DBE Assurance Language:** In accordance with 49 CFR 26.13 (b), the Contract FDOT signs with the Contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: “The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate.”

**7-24.3 Plan Requirements:** Include the following in the DBE Affirmative Action Program Plan:

(a) A policy statement, signed by an authorized representative (president, chief executive officer, or chairman of the contractor), expressing a commitment to use DBEs in all aspects of contracting to the maximum extent feasible, outlining the various levels of responsibility, and stating the objectives of the program. Circulate the policy statement throughout the Contractor’s organization.

(b) The designation of a Liaison Officer within the Contractor’s organization, as well as support staff, necessary and proper to administer the program, and a description of the authority, responsibility, and duties of the Liaison Officer and support staff. The Liaison Officer and staff are responsible for developing, managing, and implementing the program on a day-to-day basis for carrying out technical assistance activities for DBEs and for disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to participate in Contracts let by the Department.

(c) Utilization of techniques to facilitate DBE participation in contracting activities which include, but are not limited to:

1. Soliciting price quotations and arranging a time for the review of plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of quotations.

2. Providing assistance to DBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance.

3. Carrying out information and communication programs or workshops on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

4. Encouraging eligible DBEs to apply for certification with the Department.

5. Contacting Minority Contractor Associations and city and county agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible DBE contractors to apply for certification with the Department.

7-24.4 DBE Records and Reports: Submit the following through the Equal Opportunity Compliance System:

1. Anticipated DBE Participation Statement - within 3 business days after the Pre-Construction Conference.

2. Report monthly, through the Equal Opportunity Compliance System on the Department's Website, actual payments (including retainage) made to DBEs for work performed with their own workforce and equipment in the area in which they are certified. Report payments made to all DBE and Minority Business Enterprise (MBE) subcontractors and DBE and MBE construction material and major suppliers.

The Equal Opportunity Office will provide instructions on accessing this system. Develop a record keeping system to monitor DBE affirmative action efforts which include the following:

- (a) the procedures adopted to comply with these Specifications;
- (b) the number of subordinated Contracts on Department projects awarded to DBEs;
- (c) the dollar value of the Contracts awarded to DBEs;
- (d) the percentage of the dollar value of all subordinated Contracts awarded to DBEs as a percentage of the total Contract amount;

(e) a description of the general categories of Contracts awarded to DBEs;  
and

- (f) the specific efforts employed to identify and award Contracts to DBEs.

Upon request, provide the records to the Department for review.

Maintain all such records for a period of five years following acceptance of final payment and have them available for inspection by the Department and the Federal Highway Administration.

#### **7-24.5 Counting DBE Participation and Commercially Useful Functions:**

49 CFR Part 26.55 specifies when DBE credit shall be awarded for work performed by a DBE. DBE credit can only be awarded for work actually performed by DBEs themselves for the types of work for which they are certified. On the Anticipated DBE Participation Statement only include the dollars that a DBE is expected to earn for work they perform with their own workforce and equipment. Submit a revised Anticipated DBE Participation Statement to reflect changes to the initial Anticipated DBE Participation Statement within 14 business days from the date of the change.

When a DBE participates in a contract, the value of the work is determined in accordance with 49 CFR Part 26.55, for example:

(a) The Department will count only the value of the work performed by the DBE toward DBE goals. The entire amount of the contract that is performed by the DBE's own forces (including the cost of supplies, equipment and materials obtained by the DBE for the contract work) will be counted as DBE credit.

(b) The Department will count the entire amount of fees or commissions charged by the DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services or for providing bonds or insurance specifically required for the performance of a Department-assisted contract, toward DBE goals, provided that the Department determines the fees to be reasonable and not excessive as compared with fees customarily followed for similar services.

(c) When the DBE subcontracts part of the work of its contract to another firm, the Department will count the value of the subcontracted work only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(d) When a DBE performs as a participant in a joint venture, the Department will count the portion of the dollar value of the contract equal to the distinct, clearly defined portion of the work the DBE performs with its own forces toward DBE goals.

- (e) The Contractors shall ensure that only expenditures to DBEs that

perform a commercially useful function in the work of a contract may be counted toward the voluntary DBE goal.

(f) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

(g) To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(h) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

(i) If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own workforce, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE has not performed a commercially useful function.

**7-24.6 Prompt Payments:** Meet the requirements of 9-5 for payments to all DBE subcontractors.